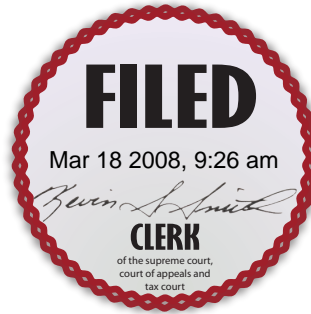


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DERELE THAMES,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0512-CR-1168

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable David Shaheed, Judge  
Cause No. 49G14-0412-FD-222752

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**March 18, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Derele Thames (“Thames”) challenges his conviction for Driving While Suspended, a Class A misdemeanor.<sup>1</sup> We affirm in part, reverse in part, and remand with instructions to the trial court to modify the Class A misdemeanor to a Class A infraction.

## **Issues**

Thames presents two issues for review:

- I. Whether a certified copy of a driving record was properly admitted into evidence; and
- II. Whether there is sufficient evidence to support his conviction of Driving While Suspended as a Class A misdemeanor.

## **Facts and Procedural History**

On December 8, 2004, Indianapolis Police Officer Andrew Rolinson (“Officer Rolinson”) initiated a traffic stop after observing a black Chevrolet Malibu driven by Thames make a left turn while failing to yield to eastbound traffic. Officer Rolinson asked Thames if he had a driver’s license. Thames responded that his license was suspended, but he produced an identification card. Officer Rolinson conducted a computer records search and received information that Thames lacked a valid driver’s license, had fifty-two points against his prior license, and had two unrelated warrants. Thames was arrested. During the search incident to the arrest, marijuana was discovered in Thames’ jacket pocket.

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<sup>1</sup> Ind. Code § 9-24-19-2. Thames does not challenge his conviction for Possession of Marijuana, as a Class D felony.

Thames was charged with Possession of Marijuana, as a Class D felony,<sup>2</sup> Driving While Suspended, and Operating a Vehicle Having Never Received a License, a Class C misdemeanor.<sup>3</sup> At the conclusion of a bench trial conducted on November 11, 2005, Thames was acquitted of the latter charge and convicted of Possession of Marijuana and Driving While Suspended. Thames was ordered to serve in Community Corrections concurrent sentences of 180 days on each count. He now appeals.

## **Discussion and Decision**

### **I. Admissibility of Driving Record**

Thames contends that the trial court abused its discretion by admitting into evidence a certified driving record offered by the State without a proper foundation. According to Thames, the State failed to show by what identification procedure the record was obtained, and ultimately failed to show that the record belonged to the person on trial.

The decision to admit evidence is within the sound discretion of the trial court and is afforded great deference on appeal. Bacher v. State, 686 N.E.2d 791, 793 (Ind. 1997). Generally, the admission or exclusion of evidence will not result in a reversal on appeal absent a manifest abuse of discretion that results in a denial of a fair trial. Dorsey v. State, 802 N.E.2d 991, 993 (Ind. Ct. App. 2004). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Myers v. State, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999).

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<sup>2</sup> Ind. Code § 35-48-4-11.

<sup>3</sup> Ind. Code § 9-24-18-1.

Indiana Code Section 9-30-3-15 provides that a driving record may be admitted to establish a prior conviction of driving while suspended, if “the prosecuting attorney [establishes] that the document identifies the defendant by the defendant’s driving license number or by any other identification procedure utilized by the BMV.”

Here, the last page of the certified driver’s record indicates that the search parameters used were a name and a social security number. The traffic ticket for failure to yield issued to Thames by Officer Rolinson indicates that Thames’ social security number is the same number as that which appears on the certified driver’s record. Because Thames’ driving record was identified by a proper procedure pursuant to Indiana Code Section 9-30-3-15, the record was admissible and the trial court did not abuse its discretion.

## II. Sufficiency of the Evidence

Thames was charged with violating Indiana Code Section 9-24-19-2, which provides:

A person who operates a motor vehicle upon a highway when the person knows that the person’s driving privilege, license, or permit is suspended or revoked, when less than ten (10) years have elapsed between:

- (1) the date a judgment was entered against the person for a prior unrelated violation of section 1 of this chapter, this section, IC 9-1-4-52 (repealed July 1, 1991), or IC 9-24-18-5(a) (repealed July 1, 2000); and
- (2) the date the violation described in subdivision (1) was committed; commits a Class A misdemeanor.

Pursuant to this statute, the offense of driving with a suspended license is elevated from a Class A infraction to a Class A misdemeanor when the State establishes a prior requisite statutory violation. Thames contends that the State failed to present sufficient evidence to support his conviction of a Class A misdemeanor as opposed to the lesser-included Class A infraction of driving while suspended because the driving record does not specify which

section of the Indiana Code he had previously violated and the State did not present testimonial evidence in this regard.

In order to establish a violation of Indiana Code Section 9-24-19-2, the State is required to prove which section of the Indiana Code the driver previously violated. See Trotter v. State, 838 N.E.2d 553, 560 (Ind. Ct. App. 2005). Here, the State did not do so at trial and we decline the State's invitation to speculate upon appeal.

However, the evidence presented by the State at trial, including the testimony of Officer Rolinson and Thames' driving record, establishes that Thames drove without a license. Thus, he violated Ind. Code Section 9-24-19-1, which provides: "a person who operates a motor vehicle upon a highway while the person's driving privilege, license, or permit is suspended or revoked commits a Class A infraction." An offense is a lesser-included offense if it can be established by the same material elements or less than all of the material elements of the original offense charged. Trotter, 838 N.E.2d at 560. This Court may order a modification of the judgment of conviction to that of a lesser-included offense in the event of insufficiency of evidence on a particular element of the crime.

We affirm in part, reverse in part, and remand to the trial court with instructions to modify the Class A misdemeanor judgment to a Class A infraction.

FRIEDLANDER, J., and KIRSCH, J., concur.